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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 175022

PRELIMINARY RECITALS

Pursuant to a petition filed on June 15, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on August 11, 2016, by telephone.

The issue for determination is whether Petitioner's appeal is timely.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], RN

Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. A prior authorization (PA) request seeking Medicaid payment for personal care worker services was filed on behalf of Petitioner on or about March 16, 2016.
3. The notice indicating the Department's disposition of this PA is dated April 27, 2016 and states that the appeal deadline is June 11, 2016 – a Saturday. This appeal was filed with the Division of Hearings and Appeals on Wednesday, June 15, 2016 – this is the postmark date.

DISCUSSION

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medicaid matters must be filed within 45 days of the notice of the agency decision. §49.45(5)(a), *Wis. Stats.*

The appeal deadline time limit for this case was Monday, June 13, 2016 (as the 45th day, June 11, 2016, fell on a Saturday, the filing deadline is extended to Monday, June 13, 2016 by Wis. Stat, §990.001(4) (b)). It was noted to be received on the postmark date which was June 15, 2016. As the appeal was filed the appeal deadline, the Division of Hearings and Appeals no longer has authority to make a determination on the merits of this matter. The Division of Hearings and Appeals has no legal authority to expand these time limits.

The above was explained at the hearing as it would expedite the filing of a new PA for Petitioner. As 22 of the requested 32.5 hours of personal care worker time was approved here, Petitioner's representative (her guardian) was not sure whether a new PA would be filed immediately but that is for Petitioner and her guardian to decide.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals is without legal authority to decide the merits of this appeal as the appeal was not timely filed.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of September, 2016

\s _____
David D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on September 9, 2016.

Division of Health Care Access and Accountability